

AO 241
(Rev. 01/15)PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District: Massachusetts
Name (under which you were convicted): <u>Abder Salim Pro-se</u>		Docket or Case No.:
Place of Confinement: <u>Old Colony Correction Center</u> <u>One Administration Rd. Bridgewater, MA 02324</u>		Prisoner No.: <u>W38284</u>
Petitioner (include the name under which you were convicted) <u>Abder Salim Pro-se</u>		Respondent (authorized person having custody of petitioner) <u>v. Stephen Kennedy</u>
The Attorney General of the State of: <u>Massachusetts</u>		

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:
Essex County Superior Court, Salem, Massachusetts
- (b) Criminal docket or case number (if you know): Nos. 7877CR97724
2. (a) Date of the judgment of conviction (if you know): June 1981
- (b) Date of sentencing: Same
3. Length of sentence: life without parole
4. In this case, were you convicted on more than one count or of more than one crime? ☐ Yes ☒ No
5. Identify all crimes of which you were convicted and sentenced in this case: first degree murder
6. (a) What was your plea? (Check one)

<input checked="" type="checkbox"/> (1) Not guilty	<input type="checkbox"/> (3) Nolo contendere (no contest)
<input type="checkbox"/> (2) Guilty	<input type="checkbox"/> (4) Insanity plea

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A

(c) If you went to trial, what kind of trial did you have? (Check one)

☒ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☒ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: Massachusetts Supreme Judicial Court

(b) Docket or case number (if you know): unknown

(c) Result: affirmed

(d) Date of result (if you know): 1987

(e) Citation to the case (if you know): Com v Salim 399 Mass. 227 (1987)

(f) Grounds raised: ① insufficient evidence ② lack of good faith effort to locate witnesses (prosecution) Edwin Mercado, Jesus Rosario, (their testimony - previous - was read into the records) ③ unobjected to cross exam of defense witnesses as to why they did not testify at the first trial ④ admission of prior bad acts ⑤ abuse of discretion appointing interpreter for witness ⑥ impermissible fee arrangement with trial counsel, ⑦ cumulative error c 278 section 33E

(g) Did you seek further review by a higher state court? ☐ Yes ☐ No

If yes, answer the following:

(1) Name of court: first degree murder cases go directly to SJC

(2) Docket or case number (if you know): _____

(3) Result: _____

(4) Date of result (if you know): _____

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(h) Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes☒ No

If yes, answer the following:

(1) Docket or case number (if you know): N/A(2) Result: N/A(3) Date of result (if you know): N/A(4) Citation to the case (if you know): N/A10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: Essex County Superior Court
- (2) Docket or case number (if you know): Nos. 7877 CR 97724
- (3) Date of filing (if you know): two motions for new trial melded into
- (4) Nature of the proceeding: one (1990-1991)
- (5) Grounds raised: ① prosecutorial misconduct ② ineffective assistance of counsel ③ judicial error in admitting testimony and in handling of exhibits ④ new discovered evidence affidavits from Edwin Mercado recanting, and Jacobo Reyes stating that Salim's brother in law - offered him \$ to lie to police about Salim, and Edwin Mercado stated he accepted \$1,500. from Salim's brother in law to lie about Salim.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☒ Yes ☐ No

(appendix 22-29, 30-34 affidavits)

(7) Result: Trial court ruled affidavits untrustworthy(8) Date of result (if you know): unknown

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(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: first and second motion were combined (1990-1991)

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: Essex County Superior Court(2) Docket or case number (if you know): Nos. 7877 CR 97.724(3) Date of filing (if you know): 2001(4) Nature of the proceeding: motion for new trial(5) Grounds raised: Nine witnesses' affidavits whom Salim's father Bishara had confessed to having killed the victim in this case, and two witnesses' affidavits whom Salim's brother in law Hamdi confessed to that he was accomplice to the murder and coverup.* During the pendency of the 2001 motion Salim moved for DNA testing of victim's fingernail scrapings — ALLOWED but only if Salim paid over \$3,000, which Salim paid. Results came in 2005 EXCLUDING SALIM.

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☒ Yes ☐ No(7) Result: Judge opined that Salim's father lied to witnesses(8) Date of result (if you know): Unknown

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☒ Yes ☐ No(2) Second petition: ☒ Yes ☐ No(3) Third petition: ☒ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

There was an ill advised inmate drafted motion (lack of sanity defense which was denied and never appealed)

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: DNA evidence disproves almost all the prosecution theory of guilt.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner was convicted in 1981, (after first trial ended in mistrial). In 2001 petitioner moved to test victim's fingernail scrapings for DNA. ALLOWED if petitioner paid over \$3,000. Result: No male DNA detected. Prosecutor stressed in summation that it was petitioner's blood under her nails. Petitioner had DNA results in 2005. His English comprehension is poor and his appointed counsel saw no value in the DNA result.

(b) If you did not exhaust your state remedies on Ground One, explain why:

I did exhaust the issue. The Massachusetts Supreme Judicial Court denied his "gatekeeper" petition July 9, 2020 (Barbara Lark A.J.)

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(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No(2) If you did not raise this issue in your direct appeal, explain why: DNA analysis wasunknown since back then

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: 2018 filed rule 30; rule 25(b)(2) motionName and location of the court where the motion or petition was filed: Essex Superior CourtSalem, MassachusettsDocket or case number (if you know): Nor. 7877CR97724Date of the court's decision: July 9, 2020 Sept. 3, 2019Result (attach a copy of the court's opinion or order, if available): appendix pgs 73-75

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition?

☒ Yes ☐ No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Massachusetts Supreme Judicial CourtDocket or case number (if you know): SJ-2019-0439Date of the court's decision: July 9, 2020Result (attach a copy of the court's opinion or order, if available): gate keeper petition denied(no leave to appeal to the full court). appendix 76-83

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have

used to exhaust your state remedies on Ground One: The New England Innocence Project "screened"
the case for close to five years. CPCS "screened" the case for 2 weeks.

GROUND TWO: The prosecutor in summation urged the jury to do an
impermissible experiment in the jury room - no objection - no admonition.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Transcript pg 2299: prosecutor urged to pretend (for the jury in the jury room)
that you are being stabbed from behind and reach back over your
shoulder and see where your fingertips collide with mock
stabber in back of you.

(b) If you did not exhaust your state remedies on Ground Two, explain why: I did. I fairly
raised it in trial court and the SJC

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why: It was not a live
issue in 1981 because ~~the~~ DNA technology was
unknown.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: rule 30; rule 25(b)(2)

Name and location of the court where the motion or petition was filed: Essex Superior Court
Salem, Massachusetts

Docket or case number (if you know): 7877CR97724

Date of the court's decision: Sept. 3, 2019

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Result (attach a copy of the court's opinion or order, if available):

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appendix pgs 74, 75

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition?

☒ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Massachusetts Supreme Judicial
Court Boston MassachusettsDocket or case number (if you know): ST-2019-0439Date of the court's decision: July 9, 2020

Result (attach a copy of the court's opinion or order, if available):

appendix 76 - 83gate keeper petition denied

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you

have used to exhaust your state remedies on Ground Two: I pleaded with New England
Innocence Project for almost 5 years and CPCs for
weeks.GROUND THREE: There were (9) episodes of courtroom closure only
objected to by The Lawrence Eagle Tribune.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

There were nine episodes of courtroom closure for voir dire
of prospective witnesses. The only party objecting was The Lawrence
Eagle Tribune. Some voir dire witnesses testified innocently
with the press excluded, but turned hostile once the
jury was in for actual testimony.

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(Rev. 01/15)(b) If you did not exhaust your state remedies on Ground Three, explain why: I did.

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No(2) If you did not raise this issue in your direct appeal, explain why: My tongue is Arabic. When I emigrated to Lawrence, Massachusetts I learned Spanish, not English. I relied on attorneys who neglected me.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: rule 30; rule 25 (b)(2)Name and location of the court where the motion or petition was filed: Essex Superior CourtSalem, MassachusettsDocket or case number (if you know): 7877CR97724Date of the court's decision: Sept. 3, 2019Result (attach a copy of the court's opinion or order, if available): denied appendix 73-75

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition?

☒ Yes ☐ No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Massachusetts Supreme Judicial Court — Boston, MassachusettsDocket or case number (if you know): ST-2019-0439Date of the court's decision: July 9, 2020Result (attach a copy of the court's opinion or order, if available): denied appendix 76-83

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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you

have used to exhaust your state remedies on Ground Three:

*I wasted lots of time thinking
New England Innocence Project would help - almost 5 years.
CPCS only took 2 weeks to reject me.*

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes

☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes

☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

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Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

☐ Yes

☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes

☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes

☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

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13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☒ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

No.

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

unknown

(b) At arraignment and plea:

(c) At trial:

McNamara (1st trial)O'Donovan (2nd trial)

(d) At sentencing:

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(e) On appeal:

Jane White

(f) In any post-conviction proceeding:

Robert D. Keefe

(g) On appeal from any ruling against you in a post-conviction proceeding:

Robert D. Keefe60 State St. Boston 02109

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☐ No N/A

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

I claim equitable tolling because of my language impediment and my underlying mental health issues - some of which are documented from (6) years before the murder. Also I qualify for equitable tolling because DNA evidence, (which I had to pay the cost of my money for) is evidence of actual innocence.

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* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

Grant the petition, but first
appoint counsel - preferably one who is fluent in either Arabic
or Spanish.

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on _____ (month, date, year).

Executed (signed) on _____ (date).

Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

